



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams

Secretary for

Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties

Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger

Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353

(858) 467-2952 • Fax (858) 571-6972

[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 20, 2010

Certified Mail-Return Receipt Requested

7009 1410 0002 2000 0347

Gino Russo

Russo Tile and Marble, Inc.

635 Front St.

El Cajon, CA 92020

In reply refer to:

WDID: 9 371021620

642570: ranson, jhaas

Dear Mr. Russo:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2010-0128 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST RUSSO TILE AND MARBLE, INC. FOR VIOLATION OF STATE BOARD ORDER NO. 97-03-DWQ, NPDES NO. CAS000001

Enclosed find Complaint No. R9-2010-0128, for Administrative Civil Liability against Russo Tile and Marble, Inc. for the amount of \$1,700 for violation of reporting requirements established by State Water Resources Control Board Order No. 97-03-DWQ, NPDES No. CAS000001. The violation addressed in the Complaint results from failure to submit the Fiscal Year 2009 annual monitoring report for your industrial facility. California Water Code (Water Code) sections 13399.33(2)(c) and (d) require the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to impose civil liability in an amount that is not less than one thousand dollars (\$1,000) plus staff costs for failure to submit the annual report required by Order No. 97-03-DWQ. The amount of liability recommended in Complaint No. R9-2010-0128 is for the minimum required plus \$700 in staff costs.

Waiver of Hearing

Pursuant to Water Code section 13323, the San Diego Water Board will hold a hearing on the Complaint no later than 90 days after it is served. Russo Tile and Marble, Inc. may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$1,700 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of Russo Tile and Marble, Inc.'s right to a public hearing, Russo Tile and Marble, Inc. must submit the following by 5 P.M., Thursday, October 21, 2010.

California Environmental Protection Agency

1. The enclosed waiver form signed by an authorized agent of Russo Tile and Marble, Inc. ; and
2. A cashier's check for the full amount of civil liability of \$1,700 made out to the State Water Resources Control Board.

Public Hearing

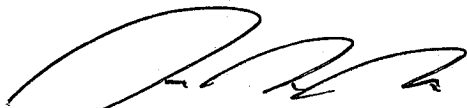
Alternatively, if Russo Tile and Marble, Inc. elects to proceed to a public hearing, a hearing is scheduled to be held at the San Diego Water Board meeting on December 8, 2010. The meeting is scheduled to convene at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. At that time, the San Diego Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find procedures I am recommending that the San Diego Water Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by October 1, 2010 to the San Diego Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please be advised that if Russo Tile and Marble, Inc. elects to proceed to a public hearing the recommended liability may increase to recover additional staff costs.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Ryan Anson, at (858) 467-2968 or ranson@waterboards.ca.gov, or Jeremy Haas, at (858)467-2735 or jhaas@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive officer

JGS:jh:ra

- Enclosures:
1. ACL Complaint No. R9-2010-0128
 2. ACL Fact Sheet
 3. Waiver of Public Hearing Form
 4. Hearing Procedures

Cc: Via E-mail

Catherine Hagan, Sr. Staff Counsel, State Water Board, Office of Chief Counsel
CHagan@waterboards.ca.gov

Jessica Newman, Staff Counsel, State Water Board, Office of Chief Counsel
JMNewman@waterboards.ca.gov

David Gibson, Executive officer, San Diego Water Board
DGibson@waterboards.ca.gov

David Barker, Supervising WRC Engineer, San Diego Water Board
DBarker@waterboards.ca.gov

Eric Becker, WRC Engineer, San Diego Water Board
EBecker@waterboards.ca.gov

Reed Sato, Director, State Water Board, Office of Enforcement
RSato@waterboards.ca.gov

Greg Gearheart, Sr. WRC Engineer, State Water Board
GGearheart@waterboards.ca.gov

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter Of:

Gino Russo
Russo Tile and Marble, Inc.
635 Front St.
El Cajon, CA 92020

WDID No. 9 37I021620

Complaint No. R9-2010-0128

**For
Administrative Civil Liability**

20 September, 2010

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Russo Tile and Marble, Inc. located at 635 Front St. El Cajon, CA 92020, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to section 13399.33 of the Water Code.
2. On May 20, 2008, Russo Tile and Marble, Inc. submitted a Notice of Intent for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities.
3. Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1 of each year.
4. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of Order No. 97-03-DWQ. Self-reporting is accomplished by the submission of an annual report as outlined in Order No. 97-03-DWQ Section B-14. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.

ALLEGATIONS

5. Russo Tile and Marble, Inc. violated Monitoring and Reporting Requirements Section 13 of Order No. 97-03-DWQ by failing to submit the Fiscal Year (FY) 2008-2009 annual monitoring report.
6. In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 and 9 March 2010 (attached). The San Diego Water Board notified Russo Tile and Marble, Inc. that the San Diego Water Board has not received the 2008-2009 annual report, which was due 1 July 2009. The San Diego Water Board urged Russo Tile and Marble, Inc. to submit its annual report and alerted Russo Tile and Marble, Inc. that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. As of the date on this complaint, the San Diego Water Board has not received the Russo Tile and Marble, Inc. 2008-2009 annual report.

MAXIMUM LIABILITY

7. Under Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for the violations described in the findings of this complaint is ten thousand dollars (\$10,000) for each day in which the violation occurs.
8. Russo Tile and Marble, Inc. has violated Order No. 97-03-DWQ for 445 days, from 1 July 2009 through 20 September 2010. The maximum administrative civil liability which could be imposed by the San Diego Water Board for this violation is four million, four hundred and fifty thousand dollars (\$4,450,000).

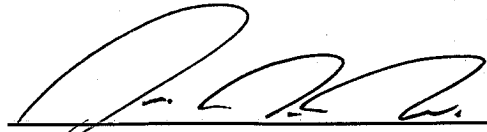
MINIMUM LIABILITY

9. Water Code section 13399.33(c) requires that the San Diego Water Board impose a mandatory minimum penalty of not less than \$1,000 and recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31.

PROPOSED LIABILITY

10. It is recommended that the San Diego Water Board impose civil liability against Russo Tile and Marble, Inc. in the amount of one thousand, seven hundred dollars (\$1,700) for failure to submit the FY 2008-2009 annual report. This includes staff costs of \$700 to date. If the discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 20th day of September 2010.



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachments: Notice of Violation No. R9-2009-0192
Notice of Violation No. R9-2010-0048

SMARTS: Violation ID 840399
Enforcement ID 402596
WDID No. 9 371021620



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>



Arnold Schwarzenegger
Governor

CERTIFIED MAIL
7009 1410 0002 2347 6644

In reply refer to:
WDID# 9 371021620
Unit Initials: Ppeuron

December 1st, 2009

Russo Tile & Marble Inc
635 Front St
El Cajon CA 92020

Subject: Notice of Violation No. R9-2009-0192: NPDES No. CAS000001: Order No. 97-03-DWQ: Discharger Name: WDID 9371021620: Failure to Submit 2008-2009 Industrial Storm Water Annual Report

**Facility: Russo Tile & Marble Inc
635 Front St
El Cajon CA 92020**

YOU ARE HEREBY NOTIFIED THAT:

You are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (Regional Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.31-33, and 13385, your failure to submit the Annual Report subjects you to possible enforcement action by the Regional Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal penalties under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page, attention Peter Peuron. As of December 4th, 2009, your report is 156 days late and your attention to this matter is needed immediately.

California Environmental Protection Agency

December 1st, 2009

Russo Tile & Marble Inc
NOV No. R9-2009-0192

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Peter Peuron at (858) 637-7137, or by email at Ppeuron@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.
Supervising Water Resources Control Engineer
Surface Water Basins Branch

DTB:esb:dpp

SMARTS:

Violation ID	840399
Regulatory ID	400552

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Russo Tile + Marble Inc
635 Front St
El Cajon, CA 92020

2. Article Number

(Transfer from service label)

7009 1410 0002 2347 6644

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes

 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™



7009 1410 0002 2347 6644
7009 1410 0002 2347 6644
7009 1410 0002 2347 6644

 U.S. Postal Service TM
CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

 For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage \$

Certified Fee

 Return Receipt Fee
(Endorsement Required)

 Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

 Postmark
Here

Sent To

Russo Tile + Marble Inc

 Street, Apt. No.,
or PO Box No.

635 Front St

City, State, ZIP+4

El Cajon, CA 92020

PS Form 3800, August 2005

See Reverse for Instructions



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>



Arnold Schwarzenegger
Governor

March 9, 2010

CERTIFIED MAIL NO. 7006 2760 0000 1615 7172
(Return receipt requested)

In reply refer to:
SMARTS-2 App. ID: 347070
NWPU: tfelix

Gino Russo
Russo Tile & Marble Inc.
635 Front Street
El Cajon, CA 92020

**Subject: 2nd Notice of Violation No. R9-2010-0048: Order No. 97-03-DWQ,
NPDES No. CAS000001 to Russo Tile & Marble Inc., WDID No. 9
37I021620: Failure to Submit 2008-2009 Industrial Storm Water
Annual Report**

**Facility: Russo Tile & Marble Inc.
635 Front Street
El Cajon, CA 92020**

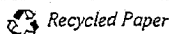
YOU ARE HEREBY NOTIFIED THAT:

On December 1, 2009, you were notified that you are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.33 and 13385, your continued noncompliance for failure to submit the Annual Report may subject you to escalated enforcement actions by the San Diego Water Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal prosecution under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To date, we have not received a report or response to this notification and the report is 251 days late.

To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page.

California Environmental Protection Agency



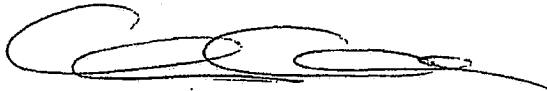
Russo Tile & Marble Inc.
Notice of Violation No. R9-2010-0048

- 2 -

March 9, 2010

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Mr. Tony Felix at (858) 636-3134, or by email at TFelix@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,




Car David T. Barker, P.E.
Supervising Water Resources Control Engineer
Surface Water Basins Branch

DTB:esb:aaf

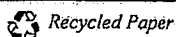
SMARTS-2:

Violation ID	841036
Enforcement ID	401210

S:\Surface Waters Basins Branch\Northern Watershed Unit\Tony\Storm Water Program\Industrial
SW2nd NOV\Russo Tile.doc



California Environmental Protection Agency



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GINO RUSSO
635 FRONT STREET
EL CAJON, CA 92020

2. Article Number

(Transfer from service label)

7006 2760 0000 1615 7172

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™



7006 2760 0000 1615 7172

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com**OFFICIAL USE**

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

Postmark
Here

Sent To

GINO RUSSO
635 FRONT STREET
EL CAJON, CA 92020

PS Form 3800, August 2006

See Reverse for Instructions

PS Form 3800, August 2006

See Reverse for Instructions

Administrative Civil Liability Complaint

Fact Sheet

The State Water Resources Control Board and the regional boards are authorized to issue a complaint for civil liabilities under California Water Code Section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint sets forth the violations that are alleged to have been committed, the Water Code provisions alleged to have been violated and it summarizes the evidence that supports the allegations, **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, a waiver options form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the regional board or state board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become a "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Board (nine volunteer members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the prosecution team nor the discharger or his/her representatives are permitted to communicate with the board members or the advisory team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing.

Withdrawal: may result if the discharger provides information to the Prosecution Staff that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the discharger of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Board's Enforcement Policy, which is available at the State Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to

pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (California Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the discharger may submit information that it believes supports its position regarding the complaint. If the discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be

compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;

3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions.

An order of the State Board, including its ruling on a petition from a regional board order, can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the regional or state board may seek an order of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Russo Tile and Marble, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2010-0128 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **one thousand, seven hundred dollars (\$1,700)** by check that references "ACL Complaint No. R9-2010-0128." made payable to the "State Water Resources Control Board". Payment must be received by the Regional Water Board by **Thursday October 21, 2010** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

STATE WATER RESOURCES CONTROL BOARD, SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R9-2010-0128
ISSUED TO

RUSSO TILE AND MARBLE, INC.

SCHEDULED FOR DECEMBER 8, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13399.33 (Water Code) against Russo Tile and Marble, Inc. (Discharger) for violation of Prohibitions contained in State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, by failing to submit the Fiscal Year (FY) 2009 annual monitoring report. The Complaint proposes that administrative civil liability in the amount of \$1,700 be imposed pursuant to Water Code section 13399.33. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of **December 8, 2010**, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on **December 8, 2010**, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN OCTOBER 1, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) Russo Tile and Marble, Inc.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **October 14, 2010**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request

shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **October 21, 2010**. The parties will be notified by 5 p.m. on **November 1, 2010** as to whether the request has been granted or denied.

Contacts

Advisory Staff:

Catherine Hagan (George), Esq.
Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
CHagan@Waterboards.ca.gov

David W. Gibson, Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Prosecution Staff:

James Smith
Assistant Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
JSmith@waterboards.ca.gov

Jeremy Haas
Senior Environmental Scientist of the Compliance Assurance Unit
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
JHaas@waterboards.ca.gov

Ryan Anson
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
RAnson@waterboards.ca.gov

Discharger:

Russo Tile and Marble, Inc.

Mr. Gino Russo, President
Russo Tile and Marble, Inc.
635 Front St.
El Cajon, CA 92020

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: James Smith, Assistant Executive Officer, Jeremy Haas, Senior Environmental Scientist of the Compliance Assurance Unit and Ryan Anson.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (**November 18, 2010**). Additional time may be provided at

the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Discharger only) If the Discharger would like to propose a Supplemental Environmental Project (SEP) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Discharger shall submit a detailed SEP proposal including a specific implementation timetable.

The Prosecution Team shall submit an electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **November 1, 2010**.

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **November 18, 2010**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **November 25, 2010**, prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing¹ for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **November 18, 2010**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **November 18, 2010** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

¹ Each Regional Water Board may choose to require earlier submission of all visual aids by all parties. OE prefers early submission of visual aids, so that they have time to confirm that the aids do not go beyond the scope of previously-submitted evidence.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

IMPORTANT DEADLINES

September 20, 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team.
October 1, 2010	Objections due on proposed Hearing Procedure
October 6, 2010	Advisory Team issues Hearing Procedure
October 14, 2010	Deadline for submission of request for designated party status.
October 21, 2010	Deadline for opposition to request for designated party status.
October 21, 2010	Discharger's deadline for waiving right to hearing.
November 1, 2010	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
November 1, 2010	Advisory Team issues decision on requests for designated party status, if any.
November 18, 2010	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
November 18, 2010	All Designated Parties' deadline for submission of request for pre-hearing conference.
November 25, 2010	Deadline for submission of written non-evidentiary policy statements by interested persons.
November 28, 2010	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
December 8, 2010	Hearing

David W. Gibson
Executive Officer

DATE

